

Indiana Commission for Continuing Legal Education

Domestic Relations Crossover From Civil Training Standards

The Indiana Commission for Continuing Legal Education is required under the Indiana Alternative Dispute Resolution Rules to certify training programs for mediators. The Commission has adopted the following standards to ensure that training programs are high quality and are uniformly treated.

I. GENERAL.

The primary trainer shall deliver all the mediation skills portions of the training. Training assistants may be used to critique role plays, to moderate small group discussions, and to participate in role play simulations.

Experts shall be used for lectures on: (1) "Psychological Issues in Domestic Relations Litigation and Mediation," including: impact on family relationships; domestic violence; relationship of financial and custody issues; psychologically dysfunctional disputants; and the use of outside experts in this area. (2) "Communications Skills and Knowledge" and "Interpersonal Dynamics;" and (3) Issues Concerning Needs. Additional experts may be used to teach specialized areas, once they are approved by the Commission for this purpose.

Participants must attend each session in its entirety, or they will not receive a training certificate or be listed on the Indiana Commission for Continuing Legal Education Registry of Approved Domestic Relations Court Mediators.

A civil trained mediator may become a registered domestic relations mediator through crossover training only if the crossover training is taken by December 31 of the second full year after taking a Commission approved 40-hour basic civil course.

Attorney participants will receive 9 hours of CLE credit including 3 hours of ethics credit. This course must be at least 24 hours in duration. An Indiana attorney who teaches the Indiana law component or ethics component shall receive CLE or ethics credit at a 4:1 ratio. Assistant trainers will receive CLE credit at a 2:1 ratio. Primary trainers may receive CLE credit at a ratio of 2:1 or 24 hours whichever is less.

Trainers must submit a list of all attendees to the Commission within thirty days of the final day of training.

II. TRAINER AND EXPERT QUALIFICATIONS.

A. Primary Trainer.

1. The primary trainer must be a mediator in good standing and an attorney in good standing in some state.

- a. The primary trainer shall not have been disqualified from mediation or the practice of law in any state.

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b. If the primary trainer is not an attorney in Indiana, an Indiana attorney must be approved by the Commission for the purpose of teaching Indiana Alternative Dispute Resolution Rules and Indiana case law on mediation.

2. The primary trainer must have taken a basic mediation course recognized by a state as approved for training court-sanctioned mediation.
3. The primary trainer must have mediated 50 court sanctioned cases, 25 within the last year.

B. Assistant Trainers.

1. Assistant trainers must be mediators in good standing and attorneys in good standing in some state. Assistant trainers shall not have been disqualified from mediation or from the practice of law in any state.
2. Assistant trainers must have taken a basic mediation course recognized by a state as approved for training court-sanctioned mediation.
3. Assistant trainers must have mediated 25 court-sanctioned cases, 10 within the last year.

C. Experts.

1. An expert shall be used to teach: "Communications Skills and Knowledge" and "Interpersonal Dynamics" portions of the course.
 - a. At a minimum, the Commission considers the following to determine whether an individual is an expert qualified to lecture on these issues:
 1. Classes taught in the behavioral, social science or communications fields;
 2. Degree programs (classes taken in pursuit of a degree in the behavioral, social science or communications fields);
 3. Experience in the behavioral, social science or communications fields (i.e. as a therapist or practitioner), and
 4. Research and writing in the behavioral, social science or communications fields.
2. The Commission must also approve the use of any other experts.
 - a. At a minimum, the Commission considers the following to determine whether an individual is an expert qualified to lecture on specialized topics:

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1. Classes taught by the individual dealing with the topic;
2. Degree programs;
3. Experience in the field in question; and,
4. Research and writing in the field in question.

III. TRAINING METHODOLOGY.

A variety of teaching techniques shall be employed including: lecture, group discussion, written exercises, mediation simulations, role plays and readings. At a minimum, every participant must take part in at least one complete role play as the mediator and one complete role play as the party. A trainee must perform each of these role play under the observation of a primary trainer or training assistant.

The primary trainer or training assistant may view no more than two role plays simultaneously.

IV. CURRICULUM, IN GENERAL.

Trainers must submit: a completed "Domestic Relations Crossover from Civil Mediation Training Program Application for Supreme Court Certification;" program agenda (including time breakdowns for each topic); bibliography of recommended reading; summary of materials to be used in the training; speaker, expert and trainer biographies; completed "Mediation Trainer Application" forms; and completed "Mediation Expert Application" forms.

Required reading for the course shall include the Indiana Alternative Dispute Resolution Rules, Indiana Family Law Title 31, and Indiana Child Support Rules and Guidelines. Readings do not count towards the 25 hours of training required. They should be assigned and completed prior to the training or at times when the training program is not being conducted. Trainers are encouraged to ensure the readings are completed.

V. CURRICULUM, MINIMUM REQUIRED SUBJECTS

A. The following core topics (which are required to be taught in both the 40-hour basic civil and the 40-hour domestic relations mediation training courses) are to be reviewed as follows:

1. Indiana Rule on ADR - (1 hour)
ADR Rule 1-6 and case law update.

Note: case law update should deal with the existing and emerging body of mediation law in these areas, not only in Indiana.

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2. Indiana Rule 7 and case law update: (1 hour)

Note: case law update should deal with the existing and emerging body of mediation law in these areas, not only in Indiana.

Topics at a minimum must include:

- a. Conflicts of interest
- b. Confidentiality and exclusions
- c. Facilitating fair, reasonable & voluntary agreements
- d. Promotion of mutual respect of the participants in the mediation session including power balancing and control and decorum
- e. Maintaining impartiality
- f. Ethical issues, including dealing with the constraints of domestic violence, substance abuse and child abuse
- g. Standards recommended by national associations
- h. Liability
- i. Role of mediators as officers of the court
- j. Addressing cultural differences between the parties
- k. Malpractice concerns
- l. Disciplinary procedures

3. Indiana Family Law. (minimum 4 hours)

- a. Property distribution (include brief overview of tax consequences of certain distributions and when to refer issues to an accountant or tax lawyer)
- b. Child support (include applicable guidelines and worksheets)
- c. Custody and visitation (include review of grandparent visitation law)
- d. Review of all relevant case law
- e. Legal context of mediation
- f. Durability/flexibility of mediated agreements
- g. Mechanics of interpreting/enforcing mediated agreements

4. Psychological Issues in Domestic Relations Litigation and Mediation. (minimum 4 hours)

Must be taught by an expert. Use green "Mediation Expert Application" form.

- a. Family relationships and how they are impacted by separation and divorce
- b. Domestic violence
- c. Child abuse
- d. Substance abuse

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- e. Relationship of financial and custody issues
- f. Psychologically dysfunctional disputants
- g. Use of outside experts
- h. Identification of other psychological issues and referral resources

5. Issues Concerning Needs. (minimum 4 hours)

Must be taught by an expert. Use green "Mediation Expert Application" form.

- a. Differing perspectives of the father, mother and child and how these perspectives may change over time
- b. Impact of legal processes on children's attitudes/behavior
- c. Co-parenting and shared parental responsibility
- d. Parenting agreements from the mental health professional's point of view
- e. How different parties' needs change over time and how to anticipate and manage these changes
- f. How needs in the initial separation differ from needs in a modification of an order or agreement
- g. What is in the "best interests of the child?"

B. The following topics shall be taught by the primary trainer, or an attorney who otherwise meets the criteria of II(C)(2).

1. Lawyers and Mediation (minimum 3 hours)

- a. Role of litigants' lawyers in mediation process
- b. Attorney/client relationships
- c. Establishing credibility with lawyers
- d. Attorney fees issues
- e. Dealing with legal issues
- f. Private sessions with lawyers
- g. Malpractice concerns
- h. Discovery issues
- i. Difference between court ordered and voluntary mediation
- j. Local mediation procedures and forms
- k. Trial court rules and procedures

- 1. Referral criteria - e.g. to accountants, appraisers, etc.
- 2. Dynamics of Mediation (minimum 3 hours)

- a. Dealing with institutional litigants

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- b. Complexity of litigation
- c. Third party interests
- d. Dealing with insurance
- e. Carrier assessments/roles
- f. Context/environment in which the case is proceeding to mediation
- g. Community resources and experts
 - i. referral processes
 - ii. when to refer / for what purposes
 - iii. most common types of referrals

C. Although the following topics may be repetitive of the 40-hour domestic relations mediation training course, they must be addressed as they apply to the domestic relations arena. (C1 and C2 may be taught in the same unit, and jointly must account for a minimum of 2 hours of the course.)

Interpersonal Dynamics in Communications

1. Relationship Skills and Knowledge (Must be taught by an expert)

- a. Common issues surrounding relationship of litigants.
- b. Forming relationships and building rapport
- c. Use of outside experts
- d. Establishing trust
- e. Setting a cooperative tone
- f. Establishing neutrality and impartiality
- g. Empathetic listening and questioning
- h. Empowering parties
- i. Using self as a barometer for understanding party reactions
- j. Staying non-judgmental
- k. Psychologically dysfunctional disputants

2. Communication Skills and Knowledge. (Must be taught by an expert)

- a. Listening
- b. Responding
- c. Guiding
- d. Paraphrasing
- e. Confronting
- f. Reframing
- g. Attending to non-verbal communication
- h. Identifying areas of consensus and disagreement
- i. Questioning
- j. Clarifying

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- k. Using clear, neutral language
- l. Balancing communication
- m. Modeling constructive behavior

D. The remaining hours shall be devoted to.

1. Information Gathering Skills and Knowledge. This area must include a structured role play. The exercise must highlight:

- a. Questioning
- b. Setting the agenda and prioritizing areas
- c. Identifying issues
- d. Screening issues
- e. Exploring parties' background interests and concerns

2. Problem-Solving Skills and Knowledge. This area must include a structured role play. This exercise must highlight:

- a. Identifying and analyzing problems and needs
- b. Collecting data
- c. Prioritizing issues
- d. Framing issues
- e. Narrowing issues
- f. Converting positions into needs and interests
- g. Educating parties
- h. Identifying areas of agreement
- i. Identifying principles and criteria to assist decision-making
- j. Designing temporary plans
- k. Developing options and brainstorming
- l. Evaluating options and consequences
- m. Testing reality
- n. Developing an implementation plan
- o. Assisting parties to identify alternatives to a mediated agreement

3. Ethical Decision-Making and Values Skills and Knowledge

- a. Understanding mediation standards of ethical practice
- b. Being sensitive to parties' values, including culture
- c. Being non-judgmental
- d. Establishing a commitment to honest disclosure
- e. Maintaining dignified behavior
- f. Being respectful of the parties
- g. Not imposing personal and professional values

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- h. Establishing and maintaining a right to self-determination by the parties
- i. Honoring the uniqueness of parties
- j. Ensuring individual responsibility of parties for themselves
- k. Establishing the importance of each individual's participation
- l. Ensuring voluntary agreements and participation
- m. Recognizing responsibilities to non-present parties
- n. Dealing with commonly encountered ethical dilemmas

4. Interaction and Conflict Management Skills and Knowledge (this area must include a structured role play)

- a. Using ground rules
- b. Reducing tensions
- c. Balancing power
- d. Refocusing
- e. Confronting
- f. Strategizing/orchestrating
- g. Caucusing
- h. Managing impasse
- i. Empowering parties
- j. Distracting/redirecting
- k. Dealing with strong emotions
- l. Maintaining control of the process
- m. Managing the influence of outside parties

5. Professional Skills and Knowledge

- a. Case management
- b. Community and legal resources
- c. Drafting memoranda and agreements
- d. Effective use of outside experts
- e. Obtaining, recording and monitoring factual information
- f. Dealing with complex factual materials
- g. When and how to refer issues to other forms of alternative dispute resolution

VI. RECERTIFICATION

Any mediation training program, certified by the Indiana Commission for Continuing Legal Education as meeting these standards, is certified for a period of 5 years from the date of approval. However, the trainer must submit a listing of scheduled courses at least 45 days before each course, giving the date, time and place of the course.

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Any material change in the course (such as a change in a primary trainer, expert or the curriculum) requires a new application to the Commission.

VII. DECERTIFICATION

The Commission has the right to audit certified programs. Such an audit may include, but is not limited to: attendance of any part of the course; examination of evaluation forms; examination of curriculum and written materials; and, interviewing participants. Programs which are determined to no longer comply with these standards will be decertified.

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